

L. Wilcox  
P.L.I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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FILE: B-193605

DATE: JAN 8 1979

MATTER OF: John F. Donnelly - De facto employee - compensation

*[Compensation To Claimant who Served as De Facto Employee]*

DIGEST: The reasonable value of his services may be paid to a claimant who served as a de facto employee performing duties in good faith under color of authority. The claimant served at the request of agency officials who expected hiring procedures would be completed. He may be compensated for services rendered even though he was never appointed to the position. 55 Comp. Gen. 109 (1975).

*requester*

This decision is requested by the (Acting Chief Counsel, Office of the Chief of Engineers, Department of the Army) who believes that compensation for personal services rendered to the Corps of Engineers is payable to Mr. John F. Donnelly.

The issue is whether Mr. Donnelly may be paid the reasonable value of his services as a de facto employee of the Corps of Engineers, even though he was never appointed to a position in compliance with civil service laws and regulations.

Mr. Donnelly's services were performed between September 1 and November 12, 1977, for the Family Housing Division, Facilities Engineering Directorate, Corps of Engineers. Initially he was to enter into a contractual agreement as a consultant. Because his services were immediately needed, he began work before the procurement procedures were completed. However, on or about September 12, 1977, the Chief of the Contract and Procurement Division advised that he did not have authority to approve the contract with Mr. Donnelly for consultant services because directives which had been recently issued required approval for consulting services from a higher level within the the Department of Defense.

A decision was then made to hire Mr. Donnelly as a temporary employee rather than as a consultant, and he continued working while his employing office carried out the necessary hiring procedures. On October 5, 1977, the Family Housing Division forwarded for approval a request for a temporary position, together with a Standard Form 52 Request for Personnel Action, a Department of the Army Form 374

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Job Description, and a Standard Form 171 Personnel Qualifications Statement. This documentation was approved by the Resource Management Office, Office of the Chief of Engineers, on October 14, 1977, and it forwarded the Request for Personnel Action to the Civilian Personnel Office of the Military District of Washington, which received it and on November 1, 1977, released a job announcement for recruitment at grade level GS-14, step 1.

However, sometime before November 1, 1977, the Civilian Personnel Office had discovered that Mr. Donnelly, a candidate for the position advertised, was in fact filling the position. Mr. Donnelly was then informed by the Acting Chief, Family Housing Division, that his service in the position was possibly prejudicial to impartially filling the position by competitive recruitment. Consequently, Mr. Donnelly vacated the position on November 12, 1977, until this problem could be resolved.

The recruitment package was transmitted to the U.S. Civil Service Commission on November 16, 1977, where it was discovered that Mr. Donnelly was not on the civil service register as a job candidate. An employee within the Facilities Engineering Directorate was temporarily promoted to fill the position for 1 year on January 8, 1978. Mr. Donnelly did not resume working after he left the position on November 12, 1977.

We must consider whether Mr. Donnelly was a de facto employee under our recent decisions, in order that he might be paid the reasonable value of his services for the period of his service. A de facto officer or employee is one who performs the duties of an office or position with apparent right and under color of an appointment and claim of title to such office or position. Where there is an office or position to be filled, and one acting under color of authority fills the office or position and performs the duties, his actions are those of a de facto officer or employee. 30 Comp. Gen. 228 (1950), 52 id. 700 (1973), and 55 id. 109 (1975).

Mr. Donnelly was requested to begin working while actions were pending to contract with him as a consultant and later to hire him as a Federal employee under a temporary appointment. The Chief of the Family Housing Division and other officials within the Office of the Chief of Engineers were aware that Mr. Donnelly was performing work at their request while they were expecting the completion of the pending actions. They also report that he performed his duties

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in a thoroughly professional manner and contributed to the mission of the division. These circumstances show that Mr. Donnelly performed his duties with apparent right and under color of authority. He served in good faith with no indication of fraud. Consequently, Mr. Donnelly performed his services as a de facto employee.

Persons who serve in good faith as de facto officers or employees may be paid compensation equal to the reasonable value of services rendered during such period of service. 55 Comp. Gen. 109, supra. The reasonable value may be measured at the rate of basic pay for the position involved. William A. Keel and Richard Hernandez, B-188424, March 22, 1977.

Accordingly, we conclude that the Corps of Engineers may compensate Mr. Donnelly for the reasonable value of the services performed while he was in a de facto status. The reasonable value of the services may be established at the basic rate of compensation set for the position which was ultimately advertised and filled, that is, grade GS-14, step 1.

Sincerely yours,

R. F. KELLER

Deputy

Comptroller General  
of the United States